IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3483 OF 2005

M/s. Vasai Machhimar Sarvodaya
Sahakari Sanstha Maryadit. ... Petitioner

V/s

Shri Ramchandra Pandurang Kudu ... Respondent

Mr. Indrajeet R. Kulkarni for the petitioner.

Mr. Rajesh Gehani for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 23RD FEBRUARY, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner is M/s. Vasai Machhimar Sarvodaya Sahakari Sanstha Maryadit who is the aggrieved party and preferred the petition against the order passed by the 4th Labour Court, Thane, whereby the Reference (IDA) No. 268 of 1997 referred by the Dy. Commissioner of Labour, under Sec.10(1) read with Sec.12 (s) of the I.D.Act, 1947, came to be allowed and the petitioner was directed

to reinstate the respondent workman in service with full back wages and continuity of service w.e.f. 28.8.1996.

3. The workman had filed the statement of claim below Exh.U-2 contending that he was working for the petitioner Society since 1971 as office assistant and his services were terminated w.e.f. 28.8.1996 at which time his salary was to the tune of Rs.1000/- p.m. He alleged that the said termination was illegal, misconceived, bad in law and deserves to be set aside. He had joined the Society's service in the year 1971 and for some time he was also working as Cashier in addition to his normal work assigned by the petitioner. It is his case that in the year 1988 the petitioner society suspended him vide letter dated 18.12.1988 on false and fabricated grounds and after the suspension the petitioner did not pay any subsistence allowance to him. Further, he was implicated on false charges of theft and complaint came to be lodged under Sec.381 with 34 of the I.P.C. which finally culiminated in trial by the Criminal Court and his acquittal. Inspite of these aspects, the petitioner did not pay a single penni towards subsistence allowance for the period of suspension. Thereafter an enquiry was conducted in which course he received dismissal order vide letter

dated 28.8.1996 which was received on 31.8.1996 and his service came to be terminated by way of his dismissal and hence the dispute culminated in the said reference before the Labour Court on the basis of the statement of claim filed by the respondent workman.

4. The petitioner challenged the reference on various grounds inter-alia submitting that the petitioner was not an industry within the meaning of the Industrial Disputes Act and, therefore, the respondent was not a "workman" as contemplated under Sec.2(s) of the I.D. Act, 1947. It was further alleged that the reference was not maintainable and, therefore, the workman was not entitled to reliefs claimed by him.

5. The learned Labour Court raised relevant issues including the maintainability of the reference and adjudicated all the issues by giving opportunity to both sides to lead evidence respectively which they did and the Labour Court came to the conclusion that the petitioner failed to prove that it was not an industry and also failed to prove that the respondent was not a workman within the meaning of Sec. 2(s) of the I.D.Act. The finding was recorded to the effect that the enquiry conducted was not fair and proper and was perverse.

Finally it was held that the reference was maintainable and the workman was entitled to the reliefs sought for.

Being aggrieved by the said award, the present petition came to be filed.

6. The only question sought to be raised on behalf of the petitioner is to the effect that when the issue of maintainability of the reference was raised by the petitioner, it was the duty incumbent upon the Labour Court to treat the said issue as preliminary issue and adjudicate upon it before going into the merits of the matter and recording of findings on other issues.

7. The only question sought to be raised on behalf of the petitioner is to the effect that, when the issue of maintainability of the reference was raised by the petitioner, it was the duty incumbent upon the Labour Court to treat the said issue as preliminary issue and adjudicate upon it before going into the merits of the matter and recording of evidence on other issues. In support of this version, the learned counsel for the petitioner sought to put reliance on the Apex Court judgment in the case of **The Cooper Engineering Ltd. v/s P.P. Mundhe, reported in 1975 Lab.I.C. 1441** wherein

the Apex Court had opined that when a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties, that question must be decided as a preliminary issue. The reliance was also put on behalf of the petitioner on the ratio laid down by the Apex Court in the case of **Neeta Kaplish v/s Presiding Officer, Labour Court and anr., reported in 1999 1 C.L.R. 219.** However, perusal of the latter ruling would show that it would not be applicable to the present case in the sense that the ratio laid down therein is based on totally different set of facts. Be that as it may, the bone of contentions sought to be raised between the parties is whether it was necessary for the Labour Court to raise the preliminary issue regarding the maintainability of the reference before adjudicating other issues.

8. Perusal of the record has shown that the Labour Court has raised all the contentious issues at one stroke including the ratio regarding maintainability and

has recorded its findings on the basis of available evidence which was given by both parties. It was submitted on behalf of the petitioner that there was material irregularity in not framing the issue regarding the maintainability of reference regarding preliminary issue because it was necessary for the Labour Court to adjudicate on that issue and thereafter giving the petitioner further opportunity to lead its evidence on remaining issues and, therefore, on that count the petition is sought to be allowed. However, I prefer to disagree with this proposition plainly due to the reason that perusal of the entire record shows that not only both parties were given opportunity to lead the evidence on all the issues framed but both parties are seen to have actually led the evidence on all the issues and, therefore, it cannot be said that no opportunity was given to the petitioner to lead evidence on other issues after issue regarding maintainability was held against them. As can be seen from the record, the issues were framed by the Labour Court in the said reference in clear and proper manner whereby both parties were sufficiently put to notice regarding the contetious issues between the parties and thereafter sufficient opportunity was given which was availed of by both parties and exhaustive evidence was led by them which

was considered and adjudicated upon while deciding the reference by the Labour Court. Under the circumstances, I do not see any material irregularity which is alleged to be committed by the Labour Court while adjudicating the reference.

9. The learned counsel for the respondent sought to put reliance on the Apex Court ruling in the case of **D.P. Maheshwari v/s Delhi Administration & ors., reported in A.I.R. 1983 SC 425,** wherein the Supreme Court has taken the review of the earlier decisions and have observed that there was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Therefore, it is obvious that there is material shift in the law laid down by the Apex Court since the year 1975. Moreover, in the case at hand, no prejudice is seen to be caused to the petitioner due to the adjudicating of the issues alongwith the issue regarding maintainability.

10. So far as the merits are concerned, I am satisfied that the Labour Court has taken into account all the evidence on record in proper perspective and has granted the same in just, legal and proper manner and, therefore, it would brook no interference.

11. Under the circumstances, I hold that the petition is devoid of any merits and, therefore, deserves to be dismissed and stands dismissed with no order as to costs.

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